RAJARETNAM a/l PALANIANDY v. AMALGAMATED PROPERTIES & INDUSTRIES

[S.C. (Seah, Hashim Yeop A. Sani & Syed Agil Barakbah S.C.JJ.) 9 March & 27 May 1988]

[Kuala Lumpur – Supreme Court Civil Appeal No. 158 of 1986]

Labour Law – Whether labour officer has power to determine the validity of dismissal of an employee by his employer – Employment Act 1955, s. 69(1).

The only question argued in this appeal was whether the labour officer had power under section 69(1) of the Employment Act 1955 to determine the validity of the dismissal of an employee by his employer.

Held: section 69(1) of the Employment Act 1955 does not give any power to the Director-General or labour officer of the Ministry of Labour to question the validity of the dismissal of an employee by his employer.

Case referred to:

(1) *Nylex (M) Sdn. Bhd.* v. *Alias bin Chek* [1985] 1 C.L.J. 185 (folld).

SUPREME COURT.

Karam Singh (*Padma Parvety (Miss)* with him) for the appellant.

M. Nagarajah for the respondent.

Cur. Adv. Vult.

Seah S.C.J. (delivering the judgment of the court): The only question argued in this appeal was whether the labour officer had power under section 69(1) of the Employment Act 1955 to determine the validity of the dismissal of an employee by his employer?

Mr. Karam Singh for the appellant had submitted that the words "any dispute" in section 69(1) of the Employment Act 1955 are not restricted to "wage" dispute but covered all disputes between an employee and his employer including a dispute that this dismissal was without just cause or excuse.

For the respondent, Mr. M. Nagarajah had contended that the phrase "any dispute" should be given a restricted meaning and is limited only to a dispute relating to wages due to an employee arising out of the Employment Act or under a contract of service between such employee and his employer.

In our opinion, section 69(1) of the Employment Act 1955 had been considered and judicially interpreted by Harun J. in the case of *Nylex (M) Sdn. Bhd.* v. *Alias bin Chek*[1] where the learned judge appeared to have construed the phrase "any dispute" in a restricted sense as that suggested by Mr. Nagarajah. This appeal was in effect an attempt by Mr. Karam Singh to try to persuade this court to overturn the decision of Harun J. in the *Nylex* case. We have read the reasons given by the learned judge in his judgment for adopting such a course and with respect, we are in agreement with him that section 69(1) of the Employment Act 1955 does not give any power to the Director-General or labour officer of the Ministry of Labour to question the validity of the dismissal of an employee by his employer.

The appeal is therefore dismissed with costs to the respondent. The deposit to be paid to the respondent on account of taxed costs.

Appeal dismissed.

Solicitors: *Karam Singh Veriah & Co.; Shook Lin & Bok.*

JAAFAR BIN ABU & ANOR. v. PUBLIC PROSECUTOR

[S.C. (Lee Hun Hoe C.J. (Borneo), Wan Suleiman & Wan Hamzah S.C.JJ.) 12 October 1987 & 14 May 1988]

[Kuala Lumpur – Supreme Court Criminal Application No. 23 of 1987]

Criminal Procedure – Appeal – No grounds of judgment available – Whether appeal court can act in revision – Criminal Procedure Code (FMS Cap. 6), ss. 323 to 327 – Courts of Judicature Act 1964, ss. 31 & 66(1).

In this case, the applicants and another person had been charged with an offence under the Prevention of Corruption Act 1961. They were found guilty and convicted and sentenced. The applicants appealed to the High Court but as there were no grounds of judgment available (as the learned President of the Sessions Court who had tried the case had left the service), the learned judge treated the case as a revision case. After hearing arguments, he dismissed the appeal and confirmed the convictions and sentences. The applicants applied to have the following questions of law for the decision of the Supreme Court:

(a) When there is an appeal pending and no grounds of judgment are available, can the High Court act in revision?

(b) If the answer is yes, what is the proper order the learned judge should make.

Held: (1) there can be no doubt that the learned judge in this case has complete jurisdiction to act as he did, that is, to treat the case as a revision case;

(2) if the learned judge has complete jurisdiction, then he is entitled to make such order as he deems fit in the circumstances.

Case referred to:

(1) *Chunbidya & Ors.* v. *Emperor* A.I.R. 1935 P.C. 35 (apprvd).

SUPREME COURT.

G. Sri Ram for the applicants.

Mohamed Noor bin Haji Ahmad (Deputy Public Prosecutor) for the respondent.

Cur. Adv. Vult.

Lee Hun Hoe C.J. (Borneo) (delivering the judgment of the court): Pursuant to section 66(1) of the Courts of Judicature Act 1964, the following two questions were reserved for the decision of this court:

(1) When there is an appeal pending and no grounds of judgment are available, can the High Court act in revision?

(2) If the answer is yes, what is the proper order the learned judge should make.

The facts may be set out briefly. On 13 December 1982, the two applicants and one Munajat bin Taib were jointly charged with having committed an offence under section 4(a) of the Prevention of Corruption Act 1961. On 19 March 1984 they were found guilty as charged. The first applicant was sentenced to three months' imprisonment, the second applicant to one month's imprisonment, and Munajat to one day's imprisonment and a fine of $500 in default two months' imprisonment. They were also each ordered to pay $5 to the Federal Revenue pursuant to section 13 of the said Act. Being dissatisfied with the decision, the two applicants appealed to the High Court. On 28 August 1987 the High Court, after hearing arguments, dismissed the appeal and confirmed the convictions and sentences.

The learned President found the two applicants and Munajat (who did not appeal) had not raised any reasonable doubt on the truth of the case for the prosecution. Clearly, he was satisfied that the prosecution had proved the guilt of the applicants beyond reasonable doubt. However, he did not give his grounds of judgment as he had left the service. Normally, in an appeal, grounds of judgment are available. But, there is no reason why an appellate court cannot hear an appeal without the benefit of grounds of judgment, especially when an officer who had heard the case has left the service. Perhaps, the learned judge found it more convenient or appropriate to treat the case as a revision case because of the absence of grounds of judgment. Counsel for the applicants contended the learned judge was wrong to do so and urged us to order a retrial.

Quite rightly, the respondent pointed out that this was not an appeal but an application under section 66(1) of the Courts of Judicature Act 1964. It is his contention that the two questions are not questions of public interest and that they do not reflect the true facts of the case. The powers of revision by a High Court are to be found in Part VII Chapter XXXI (sections 323 to 327) of the Criminal Procedure Code and also under section 31 of the Courts of Judicature Act 1964. Under section 325(ii) of the Criminal Procedure Code it is provided that:

> "No order under this section shall be made to the prejudice of the accused unless he has had an opportunity of being heard, either personally or by advocate, in his own defence."

The applicants cannot complain that they were not heard.

We have no doubt that the High Court in hearing an appeal can proceed to exercise its revision powers. This was laid down as early as 1935 by the Privy Council in *Chunbidya & Ors.* v. *Emperor.*[1] In that case it was made clear that although the record came to the knowledge of the High Court in an appellate proceeding, the High Court could choose to exercise its revision powers. Moreover, the exercise of revision powers enabled the High Court to enhance sentence which it could not do in dealing with the appeal itself. In his judgment, Lord Atkin gave this lucid explanation (at p. 36):

> "... the powers of revision are given to the High Court alone, and the powers of revision are given to the High Court in the case of any proceeding the record of which has been called for by itself or which has been reported for orders or which otherwise comes to its knowledge.
>
> Their Lordships are clearly of opinion that when the High Court has before it on appeal a record of a criminal proceeding, the condition precedent is performed, and the High Court can then, though the record has only come to

its knowledge in the appellate proceeding, proceed to exercise its revision powers if it chooses to do so. In this case the High Court did choose to exercise its revision powers ..."

In the instant appeal the learned judge dealt with all the points raised by the parties. He inserted the words "By way of revision" under the heading of the appeal number and in another part of his judgment. It indicated that he had decided to treat the case as a revision case. There can be no doubt that he has complete jurisdiction to act as he did. The answer to the first question is therefore in the affirmative.

We do not think it is necessary to answer the second question. But, out of respect to counsel for the applicants we need only say that if the learned judge has complete jurisdiction then he is entitled to make such order as he deems fit in the circumstances. In the instant appeal, he has decided to confirm the convictions and sentences. We see no reason to interfere with his decision.

It is ordered that the sentences imposed on the applicants be carried out forthwith.

Order accordingly.

Solicitors: *Sri Ram Zulkifly & Kumar.*

LEONG SENG KIAT v. KHAW SEE SONG

[S.C. (Lee Hun Hoe C.J. (Borneo), Wan Suleiman & Wan Hamzah S.C.JJ.) 25 August 1987 & 14 May 1988]

[Kuala Lumpur – Supreme Court Civil Appeal No. 132 of 1987]

Civil Procedure – Sale of land – Failure to complete – Specific performance – Judgment in default of appearance – Application by intervener to set aside judgment in default – Substituted service of writ – Failure of intervener to file caveat – No unreasonable delay on part of intervener – Judgment in default of appearance set aside – Rules of Supreme Court 1957, O. 13 r. 12, O. 14A r. 1(1) & O. 27 r. 11.

Land Law – Sale of land – Failure to complete – Specific performance – Judgment in default of appearance – Application by intervener to set aside judgment in default – Failure of intervener to file caveat – No unreasonable delay – Whether purchaser bona fide purchaser for value without notice – Judgment in default set aside – Registrar's caveat to be registered pending further order of High Court – National Land Code 1965, ss. 319-321.

In this case, the plaintiff-appellant alleged that he had agreed to buy land from the defendants and had paid the deposit for the land on the signing of the agreement. He further alleged that the defendants had failed to complete the sale. The appellant applied for an order of specific performance and obtained judgment in default. Subsequently, the intervener-respondent applied for leave to intervene on the ground that the defendants had earlier sold the land to one Yew Ah Pee and subsequently Yew Ah Pee sold the land to him and his daughter. This was about one year before the defendants purportedly sold the land to the plaintiff-appellant. The learned judge of the High Court granted leave to the intervener to intervene and further ordered that the judgment in default of appearance be set aside and that the names of the defendants be reinstated as the registered proprietors of the land. He also ordered that the intervener be added as a defendant in the action. The appellant appealed.

Held, dismissing the appeal: (1) since the action was one with specially indorsed writ for specific performance of an agreement for sale and purchase of property, it should, under Order 13 rule 12 of the Rules of the Supreme Court 1957, proceed as if the defendants had appeared. The default judgment in this case was in breach of Order 13 rule 12 and also in breach of and in non-compliance with Order 14A rule 1(1) and Order 27 rule 11. The breach and non-compliance were fundamental defects which were not curable as the effect was to defeat the right of other parties to the action;

(2) the purpose of the orders made by the learned judge was to enable the intervener-respondent to bring up his claim and to take part in the proceedings and also to facilitate trial. In the circumstances of the case, there was no unreasonable delay on the part of the intervener and there was no reason to interfere with the learned judge's conclusion;

(3) there was not even *prima facie* evidence that the property had been bought from the appellant by a *bona fide* purchaser for value without notice of the intervener's claim and this ground of appeal could not succeed;

(4) the appeal is dismissed and an order be made that immediately after the names of the defendants are reinstated in the Land Registry record as the registered owners, the Registrar of Land Titles should register against the holding a registrar's caveat under sections 319 to 321 of the National Land Code and such registration shall continue until further order of the High Court.

Case referred to:

(1) *Lam Kong Co. Ltd.* v. *Thong Guan Co. (Pte) Ltd.* [1985] 2 M.L.J. 429 (folld).

SUPREME COURT.

Darshan Singh for the appellant.

L.E. Van Buerle for the respondent.

Cur. Adv. Vult.

Wan Hamzah S.C.J. (delivering the judgment of the court): On 20 December 1978 the plaintiff filed Civil Suit No. 582/1978 against both defendants in which he alleged that by agreement dated 15 September 1978 the defendants had agreed